

1. Legal Alert ? November 2012 - **Property Taxes in Nigeria**

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Introduction ? Property Taxes in Nigeria

There are various taxes that apply to real estate or real property transactions in Nigeria. The common public representation or perception that there are no real property or real estate taxes in Nigeria is not correct.

Some of the common taxes that apply to real property transactions in Nigeria, which will be discussed in summary formats, in this Legal Alert, are the following:-

a) Companies Income Tax and Personal Income Tax.

b) Education Tax.

c) Value Added Tax.

d) Capital Gains Tax.

e) Stamp Duties Tax.

f) State Property Taxes ? Lagos State Land Use Charge Law and the Federal Capital Territory Property Tax.

Companies Income Tax & Personal Income Tax

Any income with the resulting profit earned by any person from such income, whether such a person is a corporation or an individual, from a property transaction, is liable to the payment of tax.

Where the income earner is a corporation, the corporate tax rate in Nigeria is thirty per cent (30%) of the annual profit of the corporation; and where the income earner from a property transaction is an individual or a registered business enterprise or partnership, the graduated tax rate is twenty-four per cent (24%) for individuals earning N3,200,000 and above, per annum.

Withholding Tax

One of the tax avoidance regulations in Nigeria is the withholding tax regime which applies to both corporate bodies and individuals.

The withholding tax requirement mandatorily requires the payer of any income to withhold ten per cent (10%) of such income earned, where the recipient of the income is a corporate body, and 5% where the recipient is an individual. The withheld tax amount is an advance tax payment which must be remitted by the payer of the income to the relevant tax authorities simultaneously with the payment of the income.

The recipient, from whose income this advance tax is withheld, is entitled to utilise this advance tax so withheld, to reduce his or her or its final tax liability provided that a withholding tax credit

note or certificate is obtained on the recipient's behalf from the State or the Federal tax authority to whom this advance tax was remitted.

Education Tax

In addition to paying Companies Income Tax, incorporated corporations in Nigeria, engaged in any commercial activity, including real estate or real property transactions from which they make a profit, are liable to pay two per cent (2%) of such profit as Education tax to the Education Trust Fund. This Tax is collected on behalf of the Education Trust Fund by the Federal Inland Revenue Service ("FIRS").

Value Added Tax

All goods and services in Nigeria, including goods and services utilised in the real estate industry, are liable to be invoiced and to the payment of Value Added Tax ("VAT") at the rate of five per cent (5%) of the value of such real estate goods and services.

All taxable persons are required to ensure that within six months of their commencing business, they are registered for VAT, and mandatorily file monthly VAT returns.

Any failure to register for VAT, or to collect VAT, or to issue a VAT invoice, etc is an offence which entitles the Federal Inland Revenue Service ("FIRS") to assess the tax payer for the VAT payable based on FIRS' best of judgment of the VAT that is liable for payment; this is in addition to fines and interest at commercial interest rates on the unpaid VAT. The decisions of FIRS are however subject to further appeals where the tax payer disputes any decision of FIRS.

Capital Gains Tax

The Capital Gains Tax Act provides that any time an asset, including a real estate asset, whether situated in Nigeria or outside of Nigeria, is disposed off by a Nigerian tax payer, and a gain is derived as a result of such disposal, the resulting gain or profit shall be liable to a ten per cent (10%) Capital Gains Tax ("CGT") less such allowable expenditures that were utilised to enhance or preserve or defend the title to the asset.

However, gains arising from the disposal of an individual's principal private residence for another person's principal private residence are exempted from the provisions of the Capital Gains Tax Act. Also exempted from CGT are commercial motor vehicles and personal Gifts from which no monetary gain is derived.

In Lagos State however, the Capital Gains Tax, when applying for Governor's consent of a transfer of any interest in a property, is a flat rate of 2% of the consideration of the property transaction.

Stamp Duties Tax

The Stamp Duties Act requires that all written instruments, including instances where any

property or interest in property is or are transferred or leased to any person, must be stamped. Generally, Stamp Duties is charged at the rate of 75 kobo for every N200 of the consideration of certain real estate transactions like mortgages, while for conveyances or the transfer or sale of real property, the stamp duties rate is 75kobo for every N50. The Stamp Duties rate for lease and rental agreements is 16kobo for every N200 of the consideration of the lease or rental agreement. Any written document that is not stamped is not allowed to be received in any judicial proceeding in Nigeria until the stamp duty and the resulting penalty for the non-payment of the stamp duty is paid.

There are fines and other penalties for any failure to pay stamp duties on any written instrument that is not exempted from the payment of stamp duty.

Again in Lagos State, the flat Stamp Duty rate of 2% of the consideration of the property transaction is charged when applying for Governor's consent to the transfer of any interest in a landed property.

Lagos State Land Use Charge

The Lagos State Land Use Charge Law consolidated all real property with all land Based Rates and Charges which were formerly charged under the Assessment Law, the Land Rates Law, the Neighbourhood Improvement Charge Law and the Tenement Rates Law, into one single Property Land Use Charge ("LUC").

The Annual Charge Rates Notice, published in furtherance of the Land Use Charge Law, among other things, prescribes various Land Use Charge Rates for different kinds of properties in Lagos State.

As a guide only, commercial and residential owner-occupied properties attract an annual property Land Use Charge Rate of 0.394% of the assessed value of the property; new owner-occupier/individual properties are assessed at an annual land use charge rate of 0.132% of the assessed value of the property. It is always advisable to contact the Land Use Charge Office for a definitive assessment of your property; or visit the Lagos State Land Use Charge website, www.landusecharge.com, for more information on the LUC office closest to you.

Owner-occupier properties occupied by pensioners, family compounds, properties occupied by recognised traditional rulers, public libraries, cemeteries and burial grounds, and properties owned and occupied by a religious body but used exclusively for public worship or religious education, are exempted from the provisions of the Land Use Charge Law.

There are stiff penalties for failure to pay a property land use charge within the period stipulated in a LUC Demand Notice. In addition to fines, a defaulting tax payer can have his property brought under receivership, advertised and sold to defray all outstanding taxes, penalties and

administrative charges resulting from the default to pay this property tax.

Lagos State Governor's Consent ? Property Taxes

In addition to the above stated flat rate of 2% as Capital Gains Tax and 2% as Stamp Duties Tax, a new owner of a real property in Lagos State will also be liable to pay 3% of the accepted consideration of the property as Registration fee, and a further 8% of the value of the property as Governor's consent fee.

The Federal Capital Territory Property Tax Bill

The Nigerian National Assembly will soon pass into law the Federal Capital Territory Property Tax Bill ("FCT Property Bill"). This Property Bill imposes a property tax on all real property situated within the Federal Capital Territory ("FCT").

For commercial properties, the proposed property tax rate is 1.5% of the appraised current market value of the property, while the property tax rate for non-commercial properties is 1% of the appraised market value of the property.

Like the Lagos State Land Use Charge, properties that are exempted from the FCT Property Tax include those that are owned, occupied and used by religious bodies exclusively for religious or congregational worship, education or such similar purpose. Other exempted persons from this property tax include non-profit making cemetery or burial grounds, public parks, diplomatic premises and real property used strictly by public institutions for learning or education.

The FCT Property Tax Bill also seeks to create a Property Tax Fund which will be administered by the Minister of the Federal Capital Territory.

There are various penalties for the non-payment of this Property Tax, in addition to fines for non-compliance, obstruction and rendition of false Property Tax Returns. Other penalties include the sale of the subject property to defray any unpaid Property Tax and Fines.

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Oserogho & Associates

Business Solicitors, Tax Advisers & Notary Public

NEC Centre, 1 Engineering Close

2nd Floor, Suite 206, Off Idowu Taylor Street

Victoria Island, Lagos, Nigeria

Phone/Fax: (+234-1) 463 7414

Office Phone: (+234-1) 765 5635

Mobile: (+234-1) 803 326 4753;

P. O. Box 56261 Falomo Ikoyi Lagos

Email: contactus@oseroghoassociates.com

Website: <http://www.oseroghoassociates.com/>